

## REMARKS

In the Office Action mailed December 11, 2006, the Examiner noted that claims 1-3, 7 and 12-22 were pending, and rejected all claims. Claims 1, 7, and 12-19 have been amended, new claim 23 has been added and, thus, in view of the forgoing claims 1-3, 7 and 12-23 remain pending for reconsideration which is requested. No new matter has been added. The Examiner's rejections are traversed below.

In the Action the Examiner rejected claims 1-3, 7 and 12-22 for non-statutory double patenting. A Terminal Disclaimer is attached hereto. Withdrawal of the rejection is requested.

On page 5 of the Office Action, the Examiner rejected all claims under 35 U.S.C. § 102 as anticipated by Smith.

First, Smith is not prior art. Smith has an effective date of April 28, 1995. As shown by the attached Declaration the claimed subject matter of this application was invented prior to April 28, 1995. Withdrawal of the rejection on this basis is requested.

Second, even if Smith were prior art, the present invention distinguishes thereover as discussed below.

Smith discloses a menu called a spot interface (spot GDE 10 -graphical display element). This menu has quadrants 202-206 arranged in a circle. However, menu items (quadrants for secondary interfaces) are selected by positioning a mouse pointer (button up) over the spot GDE 10, a collar 200 containing the quadrants 202-206 appears, moving the mouse pointer (buttons up) over one of the quadrants causes the secondary interface to appear and to select an item in the secondary interface, the mouse is clicked (button down). Selection of an item is by designating a location not by making a mark/stroke. As a result, the spot GDE 10 is not a marking menu ("a radial marking menu portion" - claim 1) in which a menu item is selected with a mark/stroke (move the cursor with button down).

The secondary interface 304 is apparently considered by the Examiner to be equivalent to "a linear menu portion" of claim 1. It is noted that the spot menu 10 and radial quadrants disappear when the mouse is not over the spot 10. When a secondary interface is displayed the spot menu (quadrants) also disappears. However, as shown in figure 6 of the application both the radial marking menu and the linear menu are displayed together ("a display displaying a menu comprising a radial marking menu portion displayed simultaneously with a linear menu portion" - claim 1). Smith does not display both a radial portion and a linear portion simultaneously in response to an input event. Smith col 3 lines 2-4 says that the secondary

interface (the linear part) is displayed in the event of the mouse pointer being moved into one of the four quadrants of the collar (the radial portion). The claim 1 invention displays the linear portion in response to the same event that causes the display of the radial portion because they are simultaneously displayed. Smith's secondary interface (his linear portion) is a submenu of an item in the radial portion. In the claim 1 invention the linear portion is not a submenu of any of radial item (its items are at the same level in the menu-item tree as the top-level radial items) and for this reason they are displayed simultaneously. Smiths "submenu aspect" follows from the need to select a radial quadrant first to display the linear portion, typical of how submenus are realized in pop-up menuing systems. It is submitted that claim 1 distinguishes over Smith. Claims 7, 12-19, and 20 also emphasize the "simultaneously" displaying the radial and linear menu portions.

The menu types of Smith all are location type menus, either linear location based selection (304) or quadrant location based selection (202-208). As a result, there is no need to select a type of menu as well as make a menu item selection. In contrast, claim 1 calls for "determining selection criteria for the type and a menu item selection based on a method of selection from the one of the stroke and the location".

It is submitted that the present claims patentably distinguish over Smith and withdrawal of the rejection is requested.

The dependent claims depend from the above-discussed independent claims and are patentable over the prior art for the reasons discussed above. The dependent claims also recite additional features not taught or suggested by the prior art. For example, claim 3 emphasizes that the menu includes at least one menu item selected based on the designating of only a location. It is submitted that the dependent claims are independently patentable over the prior art.

New claim 23 emphasizes the different types of selections and the simultaneous display of the radial marking menu and the linear menu. Nothing in the prior art teaches or suggests such. It is submitted that this new claim, which is different and not narrower than prior filed claims distinguishes over the prior art.

It is submitted that the claims are not taught, disclosed or suggested by the prior art. The claims are therefore in a condition suitable for allowance. An early Notice of Allowance is requested.

If any further fees, other than and except for the issue fee, are necessary with respect to

this paper, the U.S.P.T.O. is requested to obtain the same from deposit account number 19-3935.

Respectfully submitted,

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